

## **REMARKS**

Claims 1-30 48-51 and 58 are rejected. Claims 31-47 and 52-57 are withdrawn. Reconsideration and allowance of the pending claims is respectfully requested.

### **Comments/Brief Prosecution History**

This brief history of the present Application is presented in an effort to clarify issues for appeal. The instant application was filed on April 30, 2001 with Claims 1-57 of which Claims 1, 31, 43, 48, and 52 are independent.

- In response to a Restriction Requirement of December 21, 2004, Applicants elected to prosecute Claims 1-30 and 48-51, included in Group I, and traversed the restriction requirement, arguing that examination of all the included claims would not result on an undue burden on the Office.
  
- A non-final Action was mailed on March 10, 2005 the Action included rejections directed to the following aspects:
  1. The Drawings were objected under 37 CFR 1.81(a).
  2. The Specification was rejected under 35 U.S.C. §112, *paragraph one*
  3. Claims 1-30 and 48-51 were provisionally rejected over the judicially created doctrine obviousness double patenting rejection over several other applications filed on the behalf of the assignee of the present application. (Applicant in a paper dated September 12, 2005 noted three applications were outside of the “family” of cases cited by the Examiner.)
  4. An information request under 37 CFR 1.105 sought documentation related to the following: a documentation of actual uses; an identification of products and

services embodying the claimed subject matter; an identification of the properties of similar products and services found in the prior art; citation and copies of each publication that any of the applicants relied on to draft the claimed subject matter, including a sub-request for a concise explanation; the names of products and services that have incorporated the claimed subject matter prior to filing.

5. Claims 1-30 and 48-51 were rejected under *35 U.S.C. §112, paragraph two;*

6. Claims 1-9, 12-16, 18-21, 23-24, and 48-51 were rejected under *35 U.S.C. §102(b)* over a non-patent reference entitled: "Unix Network Programming" (Stevens).

7. The below Claims were rejected under *35 U.S.C. §103(a):*

Claim 17 was rejected over the Stevens reference in-view of "Official Notice."

Claims 10 and 11 were rejected over the Stevens reference in-view a non-patent reference entitled: "Unix in a Nutshell" (Gilly).

Claims 25-28 were rejected over the Stevens reference in-view a non-patent reference entitled: "Unix Power Tools" (Peek et al.).

Claims 29 and 30 were rejected over the Stevens reference in-view a non-patent reference entitled: Creating Worldwide Software (Tuthill et al.).

- On September 12, 2005 Applicants filed an IDS citing both patent and non-patent documents.
- Concurrently, the Applicants filed a response and amended Claims 1 and 48. Applicants noted that within the one year grace period afforded by 35 U.S.C.

102(b) "GEtheSource" incorporated logic generally related to claimed subject matter. The response included arguments directed to the above issues (page numbers refer to the page on which the discussion commences):

Item 1, Page 27      Item 2, Page 18 and 28      Item 3, Page 38  
Item 4, Page 40      Item 5, Page 24                  Item 6, Page 6      Item 7, Page 33

• On November 30, 2005 the Office issued a non-final Action which included a "Response to Argument" section which maintained the rejection/objection of the following:

- (A) Objection to the drawings;
- (B) The rejection of the specification (35 U.S.C. §112, first paragraph)/maintained the request for a substitute specification;
- (C) Maintained the 35 U.S.C. §112, second paragraph to "42 terms" (included within the claims);
- (D) Included discussion directed to various claims under 35 U.S.C. §§102(b) and 103(a) (discussed below);

Subsequent sections of the November 30, 2005 Action maintained the rejection of:

- (E) Claims 1-9, 12-16, 18-21, 23-24, and 48-51 under 35 U.S.C. §102(b) over Stevens;
- (F) Claims 17, 22, 10, 11, 25-28, 29 and 30 over various combinations of Stevens and Gilly, Peek et al., Tuthill et al. and/or Official Notice;
- (G) The following obviousness double patenting objections were noted:

Claims 1, 17 and 48-50      Applications 09/847,067;  
Claims 23 and 24      Application 0/847,037 (presumed to be  
09/847,037) “in-view of” Application 09/845,752;  
Claim 25      Application 09/845,752 “in view of”  
Application 09/847,037 and Application 09/847,038 and Application 09/845,751;  
Claims 20-22      Application 09/845,780 “in view of”  
Application 09/845,752;

(H) A “Requirement for Information” requested documentation of the development and deployment of “GEtheSource.”

- On April 28, 2006 Applicants filed an IDS citing both patent and non-patent documents.

- On April 28, 2006 Applicants filed an amendment and response. The amendment amended a paragraph on Page 13, commencing on line 19 and added new Claim 58. The response addressed the issues raised in the November 30, 2005 Action commencing at the following locations:

Item A Page 35	Item B Page 21	Item C Page 32, Appendix
Item D Pages 37 and 42	Item E Page 37	Item F Page 42
Item G Page 47	Item H Page 51	

- On June 14, 2006 counsel for the Applicants and the Examiner conducted an interview. No agreement was reached.

- The instant Final Rejection issued on August 9, 2006.

From counsel's review of the record it appears generally as if no substantive progress has been made in the instant Application and the following issues remain (the issues will be addressed in the order indicated in the Final Action of August 9, 2006):

- I. The Applicants have failed to provide adequate information about the nature of the invention under 37 CFR 1.105.
- II. The specification and Claims 1-30 and 48-51 are rejected over 35 U.S.C. §112, paragraph one.
- III. Various terms within the claims (Claims 1-30 and 48-51 are noted) are considered as not being compliant with 35 U.S.C. §112, paragraph two.
- IV. The rejection of various claims under 35 U.S.C. §102(b) over "Stevens."
- V. The rejection of various claims under 35 U.S.C. §103(a) over "Stevens" in view of, alternately, "Official Notice", "Gilly", "Peek" or "Tuthill."
- VI. The Drawings are objected to under 37 CFR 1.81(a).
- VII. The provisional obviousness double patenting rejection to Claims 1, 17, 23, 24, 25 and 48-50 is maintained.

As the record is somewhat muddled, Applicants respectfully traverse any remaining objections/rejections and re-forward the arguments from the preceding

Responses. Reconsideration of the pending Action is requested in-light of the following arguments.

**I. Requirement for Information under 37 CFR 1.105**

Applicant requests the pending Requirement for Information be withdrawn as the Applicants have attempted to meet and have met the requirements imposed by 37 CFR 1.105. Briefly, this request for information was part of the original Action dated March 10, 2005. The original Action requested the following:

1. Please provide the title, citation and copy of each publication that any of the applicants relied upon to draft the claimed subject matter. For each publication, please provide a concise explanation of the reliance placed on that publication in distinguishing the claimed subject matter from the prior art.
2. Please provide the names of any products or services that have incorporated the claimed subject matter, prior to the filing of the instant application. *March 10, 2005 Action*, Page 13, paragraphs 46-48 (extracted).

In reply to the Requirement of Item 1, Applicants averred that “Applicant states that no publications were used to draft the claimed subject matter.” *Reply of March 10, 2005*, page 41.

In response to the Requirement of Item 2 Applicants noted that “. . . that a program referred to as GEtheSource incorporated logic that is related to the subject matter described in the present application. GEtheSource is a web-based

asset management application developed for Global Electronics Solutions business of GE Commercial Equipment Finance (now GE Commercial Finance). The logic pertaining to the present application was deployed in GEtheSource prior to the filing date of the presentation application, but within the one year “grace period” permitted by 35 U.S.C. § 102(b). The response also invited the Examiner to telephone counsel if the Examiner had any further questions. *Id.*

In response to the Requirement for Information in the November 30, 2005 Action, Applicants noted that GEtheSource was tested and put into production after January 2001, which is well within the one year grace period of 35 U.S.C. §102(b), as the instant Application was filed in April of 2001. Applicant also provided an Internet document which mentions a program referred to as GEtheSource. Applicants have also provided an Appendix cross-referencing claim terminology to passages within the Specification.

The continued imposition of this Requirement is contrary to the Examination Guidelines in M.P.E.P. §704.11, as these guidelines require a “narrow scope.” In contrast to the guidelines, the pending Requirement has been in the form of an open-ended question, as shown above, and does not limit the scope of the request or provide a reasonable basis (i.e., a rationale as to why the information is necessary). In the instant case, the Office’s sole assertion is that the specification is incomprehensible. *Instant Action*, Page 2, paragraph 3. (This matter will be further discussed with respect to the pending rejection(s) under 35 U.S.C. §112, paragraph one.) The Office has failed to provide any particular

reason why the Office believes this condition exists. For example, by citing a passage and then explaining how the requested information would clear-up the matter. The Office's position is inconsistent with the record, as the Office was able to issue a Restriction Requirement, which failed to note any comprehension issues, prior to finding the specification incomprehensible. While the Office asserts the "specification as originally filed is incomprehensible to one of ordinary skill in the art" (Instant Action, Page 2 paragraph 3), the Office has been able to carry out a search.

M.P.E.P. §704.11 indicates that a Requirement should be made before the first Action on the merits and should not be made with or after the final rejection; thereby giving the Applicants the opportunity to resolve the issue before a full examination on the merits. This did not occur in the present prosecution and the Applicants have answered the requirement by indicating the GEtheSource item and noting that no publications were used in generating the application. Applicants request the Requirement be withdrawn because the Applicants have answered the Requirement in accordance with 37 CFR 1.56(c).

## II. 35 U.S.C. §112, paragraph one

The pending Final Action maintains a *35 U.S.C. §112, paragraph one* rejection, to the Specification, and requests a substitute specification. Instant Action Paragraph 9, Page 3. Additionally, Claims 1-30 and 48-51 are rejected under *35 U.S.C. §112, paragraph one*. Applicants traverse the rejection. As with

other portions of this prosecution, the instant rejection is the subject of much ink. In the pending Action, the Office has asserted that (1) the as filed specification is so incomprehensible that no substantive examination can occur and (2) that Claims 1-30 and 48-51 not meet the enablement requirement of 35 U.S.C. §112, *paragraph one*. Applicants disagree. In-line with this position, the Examiner has requested a substitute specification. Applicants disagree as to the need for a substitute specification.

First, the claims at issue (with some amendment) were included in the, as filed, application and thus may form the basis for an enabling disclosure due to the fact that the claims are part of the specification as filed. 35 U.S.C. §112, paragraph two. For this reason an “interfacing layer” (asserted as missing at Page 10, Paragraph 38) is at least disclosed in as filed Claim 1, which recites “an interfacing layer to interface the problem-solving logic layer with one or more resources so that the execution models may utilize the resources when processing the client requests.” The pending rejection is additionally improper as the Office has failed to show that the claims themselves are not enabling, i.e., the claims themselves fail to enable that which is recited in the claims for the remaining “terms” at issue. Applicants assert that neither the claims nor the specification are deficient.

The thrust of the Applicants arguments with respect to this issue focuses on the legal standard embodied in 35 U.S.C. §112, *paragraph one*. In essence, this position generally rests on the following points:

1. The burden is on the Office to provide a factual rationale of why the as filed Specification fails to meet the enablement standard under *35 U.S.C. §112, paragraph one* (then and only then does the burden shift to the Applicant to present rebuttal arguments); and
2. The Office has failed to provide a factual basis for why, at the time of the invention, one of ordinary skill in the art would have to conduct an undue number of experiments to make/use the invention or provide an objective reason why one of skill in the art would doubt the enablement of the specification.

The initial rejection of March 10, 2005 (reproduced below) merely asserts that this issue has arisen because the Applicants have acted as a lexicographer. The rejection is incorrect because the plain meaning of terms is presumed without a showing that the Applicant created a special definition. Additionally, the Applicants are well within the entitlement granted an Applicant to act as a lexicographer. *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994) and M.P.E.P. §2111.01.

3. A substitute specification including the claims is required pursuant to 37 CFR 1.125(a) because of the following rejections under 35 U.S.C. 112 dealing with enablement and indefiniteness, in part because of the freedom Applicant has taken at being his own lexicographer, thus making multiple terms in the invention and claims difficult to understand. The substitute specification is also required to be in proper idiomatic English and in compliance with 37 CFR 1.52(a) and (b). The substitute specification filed must be accompanied by a statement that it contains no new matter.

*March 10, 2003 Action, Page 3.*

Further, the Office's initial basis for the 35 U.S.C. §112, paragraph one (reproduced below) rejection fails to meet the guidelines set forth in M.P.E.P. §2164.04 which places the burden on the Office to (1) select the meaning the he/she intends to use and (2) explicitly set forth the meaning of the term and scope of the claim. *Id.* These deficiencies have not been corrected in the subsequent actions. The M.P.E.P. states "the minimal requirement is for the examiner to give reasons for the uncertainty of the enablement." *Id.* The instant rejection fails to provide any factual basis for the assertions sufficient to warrant a substitute specification or to provide a basis for shifting the burden to the Applicants.

5. Claims 1-30 and 48-51 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Examiner submits that the specification and claims go into great detail on the technical aspects of the invention. But the Examiner strongly believes that the invention cannot be enabled because the Examiner cannot ascertain what the invention is attempting to accomplish. The specification refers to various modules, which are swapped out to adapt the architecture to different domains. [page 6] The Examiner requests that Applicant clearly cite where in the specification these various modules are defined and what they actually accomplish. The Examiner sees that Applicant refers to the use of this architecture in various domains, and gives examples of such. The Examiner is unclear how, if at all, the invention can be implemented to actually work in said various domains. The Examiner understands that Applicant wishes to receive all possible breadth of claim coverage. In this case, the Applicant has attempted to describe vaguely a multitude of uses for the invention with a very clear technical description of the underlying subject matter. Unfortunately this combination has made it very difficult to actually implement the invention because there is no hint of how to implement the technical disclosure. A broader, over simplified analogy could be made to a person who has been given a detailed schematic of a telephone wiring closet without saying why it is there, what the telephone wiring closet actually is, or how it can be used to connect telephones so people can talk to each other over them. That person would then be able to read and understand the schematic, but would suffer an unreasonable burden in attempting to grasp what the intention is of the device described in the schematic and then once the intention was discovered would suffer yet another unreasonable burden in actually deciding how the invention could be applied to various environments and implementing the invention to fit that inferred application.

March 10, 2005 Action, Page 4

In the latest Action, Page 9, the Office argues that “Examiner strongly believes that the invention cannot be enabled because the Examiner cannot ascertain what the invention is attempting to accomplish.” This circularly argues that a deficiency must exist because the Examiner does not understand the invention; rather than pointing out what ambiguity exists in the disclosure, e.g., a widget is claimed, a widget can be either A or B and the specification does not specify whether the widget is A or B.

Additionally, the Office’s telephone closet schematic analogy discussed in the Action is flawed because the analogy fails to consider the status of the reader. Thus, while the average person on the street may not immediately recognize that which is disclosed by a schematic, one of ordinary skill in the art, reading the same schematic may know precisely the invention’s utility, novelty and understand how to make/use the invention. This is to say, an electrical schematic conveys volumes of information to an electrical engineer that may not be apparent to a PhD in chemistry or biology. The Office’s assertions do not go to the reasons for the uncertainty of the enablement but, instead presumes that one of skill in the art would not know why the electrical closet exists or for what purpose the closet serves. The M.P.E.P. requires that the Office specifically state why one of ordinary skill in the art would consider the disclosure insufficient rather than just providing a conclusion that the disclosure is “broadly readable.” *Instant Action*, Page 2, Paragraph 3.

An application does not have to disclose all facets of the subject matter, but only has to disclose those features which are necessary for one of ordinary skill in the art to make/use the invention without undue experimentation. This is to say, the specification does not have to spell-out well known features. *M.P.E.P* §2164.05(a).

While grouped together in item 30 (Instant Action, Page 8), the first sentence noting the Office's objection under 37 CFR 1.71, fails to provide any concrete basis as to why the specification is incomprehensible. The second sentence reciting a 35 U.S.C. 112, paragraph two rejection is inapplicable, as the second paragraph of §112 is directed to claim definiteness rather than enablement.

While not obligated under prosecution guidelines, as the burden has not shifted, Applicants' reply of April 28, 2006, went so far as to include an Appendix cross-referencing claim terminology with portions of the written description.

The Office has taken exception to the Applicants' reference of nine other applications which share similar disclosures. Each of the nine other applications are in the midst of prosecution with only minor 35 U.S.C. §112 issues. The nine applications include Application Serial Numbers 09/845,751; 09/845,752; 09/845,780; 09,847,035; 09/847,037; 09/847,038; 09/847,063; and 09/847,067. The Office mistook this reference as some sort of argument for applying collateral *estoppel* to the present case. This is incorrect. The Applicants' reference to the nine other applications only was provided as evidence that other similarly situated cases have not been found to be "incomprehensible" as suggested by the Office, in

the instant case. In other words, while not binding precedent, the other nine applications serve to indicate that the present application is understandable. Additional factual recitations by the Applicants are not required under the law and the regulations as promulgated by the United States Patent and Trademark Office.

With respect the term “problem domain” a general discussion may be found at Page 7, lines 19-25, among other locations within the text.

For at least the foregoing reasons, a *prima facie* case of non-enablement does not exist. Removal of the pending rejection is requested and allowance is solicited.

### **III. 35 U.S.C. §112, paragraph two**

The Office’s rejection of Claims 1-30 and 48-51 under 35 U.S.C. §112, paragraph two is improper for at least the following reasons.

With respect to Paragraph 42, on Page 11 of the Instant Action, Applicant notes that the term “presentation layer” in Claim 16 is supported by the recitation of a “a presentation layer to receive the replies produced by the problem-solving logic layer and to structure the replies in a manner that makes the replies presentable on the various client devices,” within Claim 1. Removal of the pending rejection to Claim 16 is requested. With respect to Claim 29 (Paragraph 43) the feature of “a resource bundle containing locale-specific content” is first introduced in Claim 29, second line. As the feature is introduced in Claim 29, there is no need for antecedent basis, as a resource bundle containing locale-specific content is first introduced in the claim.

The Office's 35 U.S.C. §112, paragraph two argument asserting that the Applicant is acting as a lexicographer is misplaced. *Instant Action*, Paragraph 44, Page 11. The Office's position is internally inconsistent because it asserts that the Applicant is acting as their own lexicographer, and to support this position the Office notes that no "satisfactory definitions" are present. This is to say, the lack of definitions indicates that the Applicants are acting as their own lexicographer (i.e., one who provides definitions). This is incorrect and the Office's position ignores the plain meaning of the terms in question. Terms of a claim carry "their ordinary meaning, unless it appears that the inventor used them differently." *Gargoyles Inc. v. United States*, 28 USPQ 2d 1715, 1716-17 (Fed. Cir. 1993). This guidance indicates that the Office is obligated to apply the plain meanings of the term until the applicant provides a specific definition or when the record indicates a word is used in a fashion which would indicate the plain English understanding of the term is not intended. For example, an "interfacing layer" is generally a layer which is capable of interfacing, such as with something else. At no time has the Office asserted that the Applicant seems to be using a word in a contradictory manner from the word's standard American English meaning, e.g., "up" in place of "down", "black" in place of "white." The Office's position fails to provide a rationale why the term is used in a non-standard way. Removal of the pending rejection is requested and allowance is solicited.

**III. 35 U.S.C. §102(b)**

Claims 1-9, 12-16, 18-21, 23-24, and 48-51 stand rejected under 35 U.S.C. § 102(e) as being unpatentable over an excerpt from “UNIX Network Programming: Health Systems International,” by W. Richard Stevens (hereinafter “Stevens”), Prentice Hall, 1990. The Applicants respectfully disagree. Applicants respectfully re-submit the arguments from the preceding Reply in response to the portions of the action, which are repeated from the preceding Action of November 30, 2005.

**Claim 1** in part recites a server comprising one or more computers; and a multi-layer application. The multi-layer application includes a problem-solving logic layer, an execution environment layer, an interfacing layer, and a presentation layer. The server is generally configured such that a change in any layer can occur without impacting the other layers. This may permit flexibility in handling problem domains. Generally, the presently recited system may allow for the application of the system to a wide variety of domains without having to specifically develop source code for the domain of one computer application, thus permitting system adaptation. *Instant Application*, Page 1, lines 10-15; Page 3, line 14-24; Page 4, lines 5-10, Page 6, lines 5-10. For example, a system may permit developers to leverage common infrastructure to create different software, such as for financial management, asset repair, or inventory tracking domains. *Instant Application*, Page 6, lines 5-14. This may allow developers to modify a portion of the multi-layer application without building the application from the

ground-up. *Instant Application*, Page 6, lines 15-21. The (software) architecture is partitioned into multiple layers to promote flexibility in adapting the architecture to different problem domains (domains are discussed above). *Instant Application*, Page 8 lines 20-27. In one example, an execution infrastructure provides an interface between clients and problem-solving logic layer. *Instant Application*, Page 9, lines 22-27 and Page 10, lines 25-28.

With respect to Claim 1, the difference in opinion between the Office and the Applicants in the present matter is whether Stevens discloses a server having a multi-layer application. Applicants' position is that Steven does not, because the inetd daemon, included in a "superserver" is not described as having three layers in which a change in one layer does not effect another layer as generally recited. In contrast to the presently recited system, Stevens discloses an inetd daemon, which is a process which operates in the background. *Stevens*, Page 72. In a given example, an inetd daemon is a line printer process which waits for a specified period or until a specified event occurs. *Id.* A superserver is described which implements a single inetd daemon. *Stevens*, Page 335. In this way, the single inetd process waits to serve multiple requests instead of setting up a process for each potential service. *Id.* The inetd processes the initial requests prior to utilizing the server. *Id.* The inetd does this by executing a fork and exec. *Id.* A fork permits the parent to exit and allows the child process to continue to handle the daemon. *Stevens*, Pages 74, bottom of page to Page 75, top of page. In this manner, a request is handed off to the child for processing. *Stevens*, Pages 334

and 335. A presentation layer may be included to modify the representation to promote exchange. *Stevens*, Page 250.

The Office's current action fails to indicate how the inetd daemon could anticipate the present subject matter, as Stevens only describes a parent-child relationship and a presentation layer. As discussed by the Applicants before, the Stevens system does not anticipate the present claim because Stevens does not disclose "layers." Stevens has only a parent, a child and a presentation layer, while Claim 1 in part recites a problem solving logic layer, an execution environment layer, an interfacing layer, a presentation layer.

Further, the Office's current rejection fails to point out how the parent process and the child process, as disclosed in Stevens, meets the features recited in Claim 1. As the Examiner is aware, the examiner "ordinarily should reject each claim on all valid grounds available." *M.P.E.P. §707.07(g)* Further, "[w]here a major technical rejection is proper, it should be stated with a full development of reasons rather than by a mere conclusion coupled with some stereotyped expression." *Id.*

Additionally, the Office's has not cited a passage in Stevens as teaching wherein any of the layers may be changed without impacting other layers or how inetd is capable of permitting layer changes without impacting the entirety of the inetd (asserted as being the execution environment layer, the interfacing layer, the problem-solving logic layer). *Instant Action*, Page 5, Paragraph 18. The Office is reminded that, "[i]nherency. . .may not be established by probabilities or

possibilities. The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient.” *In re Oelrich*, 666 F.2d 578,581, 212 USPQ 323, 326 (C.C.P.A. 1981) *citing Hansgirg v. Kemmer*, 102 F.2d 212, 214, 40 USPQ 665, 667 (C.C.P.A. 1939). Emphasis added. Stevens does not address the issue of layer variation within the referenced excerpts. In Stevens, the parent process cannot be changed without impacting the child, as the child process inherits a configuration file passed from the parent. *Stevens*, Page 238. Additionally, a daemon process inherits its file access creation mask from its parent. *Stevens*, Page 74, Paragraph “Reset the File Access Creation Mask.” In this manner, the parent and child are intertwined, such that a change within the parent will impact the child. Removal of the pending rejection is request and allowance is solicited.

**Claim 48** recites in part, a method generally including “receiving requests from multiple clients, the requests being related to a business-related problem domain, wherein the business-related problem domain pertains to a particular category of business-related service”, “retrieving the data from one or more external resources and mapping the data to a domain framework for the business-related problem domain, the domain framework being independent from the problem-solving logic” and “wherein a new business-related problem domain can be exchanged for a previous business-related problem domain by replacing one or more components of the system, without having to reconstruct an entire application solution for the new business-related problem domain.” Steven fails to teach the recited features for at least the following reasons.

As discuss generally with respect to Claim 1, the Stevens superserver system does not disclose replacing one or more components of the system without having to reconstruct an entire application. In Stevens, the parent-child process relationship is such that the child inherits its file access creation mask and configuration file from the child process' parent. In this way, a replacement of the parent impacts the child.

Stevens also fails to teach business-related problem domains. The Stevens reference does not address the feature of a "business-related" problem or a "particular category of business-related service." Examples of business domains include, but are not limited to, financial management, asset repair, or inventory tracking domains. *Instant Application*, Page 6, lines 5-14. "An anticipating reference must describe the patented subject matter *with sufficient clarity and detail* to establish that the subject matter existed and that its existence *was recognized by persons of ordinary skill in the field of invention.*" *ATD Corp.v. Lydall, Inc.*, 48 USPQ.2d 1321,1328 (Fed. Cir. 1998) citing *In re Spada*, 15 USPQ.2d 1655, 1657 (Fed. Cir. 1990). Emphasis added. Stevens fails to meet the requirements, as the reference does not teach "business-related problem domain" or replacing one or more components . . . without having to reconstruct and entire application solution. As a *prima facie* case of anticipation has not been shown, removal of the pending rejection is requested and allowance is solicited.

**Claim 20** is allowable based on its dependence from Claim 1. Claim 20 additionally recites features which are not disclosed in the art of record. Claim 20

in part recites a constraint system to constrain operation of the multi-layer application . . . comprising a hierarchy of constraint layers . . . with each constraint layer containing a set of one or more constraints that customize operation of the multi-layer application. In the previous Reply, Applicants argued that, "Stevens does not disclose or suggest a constraint system that constrains the operation of a multi-layer application, where the constraint system is comprised of a hierarchy of constraint layers. The outstanding Office Action identifies Steven's configuration file (disclosed on pages 335-336) as having a bearing on this feature. However, the configuration file merely specifies the services that the superserver is to listen for and what to do when a service request arrives. It does not comprise a *hierarchy* of constraints. Reply of April 28, 2006, Page 41.

In the present Action, Page 5, Paragraph 20 (reproduced below) the Office merely asserts a hierarchy of constraints and customization is taught without citing any portion of the reference for this teaching, as is required. Stevens fails to teach or suggest a hierarchy of constraints, either at pages 335-336 or anywhere else. The cited passage from Stevens is limited to discussing establishing the inetd daemon, which includes a list of fields. *Stevens*, Pages 335. This /etc/inetd.conf file is simply a list of services that the superserver is to listen for, rather than establishing a hierarchy of constraint layers. *Id.* In each case, the superserver waits until one of the requests arrives, rather than establishing a hierarchy of services. In this way, the superserver may be triggered by any of the requests and does not utilize a hierarchy. Instead, Stevens discloses a list of requests which can

trigger the superserver. As a *prima facie* case of anticipation has not been shown, removal of the pending rejection is requested and allowance is solicited.

20. In regard to claim 20, Stevens has disclosed a *hierarchy of constraints*, given the broadest reasonable interpretation of the claim language per MPEP 2111.01. Customization is taught throughout Stevens.

#### **IV. 35 U.S.C. §103(a)**

Claims 17, 22, 10, 11, 58 and 25-30 stand rejected under 35 U.S.C. § 102(e) as being obvious over Stevens in view of the following references,

Claim 17 "Official Notice";

Claim 22 apparently over "Official Notice" of the knowledge of one of ordinary skill in the art (as no secondary reference is cited);

Claims 10 and 11 Gilly, D., et al., "Unix in a Nutshell: A Desktop Quick Reference for System V Release 4 and Solaris 2.0", O'Reilly and Associates, 1992. (hereinafter, "Gilly");

Claims 25-28 Peek, J., et al., "Unix Power Tools", O'Reilly & Associates, Inc., 1997. (hereinafter, "Peek"); and

Claims 29 and 30 Tuthill, B., et al., "Creating Worldwide Software: Solaris International Developer's Guide, 2<sup>nd</sup> Ed.", Sun Microsystems Press Prentice Hall, 1997. (hereinafter, "Tuthill").

Applicants traverse the pending rejection(s). Applicants respectfully re-forward the arguments from the immediately preceding Reply to the portions of the rejection(s) which have not changed from the preceding Action of November 30, 2005 and augment the arguments with respect to the below claims.

While **Claim 10**, is indicated as pending a rejection over Stevens in view of Gilley, the text of Paragraph 21, Page 5, the portion of the current action rejecting Claim 10 is directed to asserting the specification lacked a sufficient disclosure of an “interfacing layer.” Applicants disagree. While addressed above, an “interfacing layer” is at least discussed generally at Page 3, line 20 through Page 4, line 10, as well as, Page 12 through line 24. Moreover, while paragraph 21 discloses that a broad interpretation will be used, the Office fails to state how the cited references make the subject matter of Claim 10 obvious. Neither of the references disclose or suggest an interfacing layer including a data abstraction layer and a data coordination layer as claimed. As a *prima facie* case of obviousness has not been shown, removal of the pending rejection is requested and allowance is solicited for at least the above reasons.

**Claim 17** is pending a rejection under 35 U.S.C. §103(a) over Stevens in view of Official Notice. Applicants traverse the rejection. Claim 17 is allowable as depending from an independent Claim 1 which is believed to be in a condition for allowance.

First, Claim 17 is allowable as the secondary reference, “Official Notice” is not cited as correcting the above deficiencies in Stevens as discussed above with respect to the pending 35 U.S.C. §102(b) rejection. Claim 17 in part recites,

wherinc the presentation layer comprises:

- a presentation module to determine how the replies will appear on the client devices to users; and

- a rendering module, separate from the presentation module, to determine how to render the replies on the client devices.

The Office's assertion that the above features are inherently disclosed as displaying data on a monitor was well known at the time is only partially on point. While data may be displayed on a monitor, there has been no assertion that one of skill in the art would have known to bifurcate a presentation layer into a presentation module and a separate rendering module. This is to say, that there has been no showing that one of skill in the art would have known to have a presentation layer including a presentation module and a rendering module. Additionally, the Office has failed to provide any support for the imposition of "Official Notice." Applicants challenged the Office's application of "Official Notice" in Applicant's Reply of September 12, 2005, Pages 35 & 36.

As the Office is well aware, Applicants are required to seasonably challenge statements by the Office that are not supported on the record. M.P.E.P. §2144.03. Further, it is noted that "Official Notice" is to be limited to instances where the facts are "capable of instant and unquestionable demonstration as being well-known". M.P.E.P. §2144.03. This is not the present situation. First, in accordance with M.P.E.P. §904, it is presumed that a full search was conducted and this search is indicative of the prior art. The search failed to disclose a reference which would teach or suggest modifying the *Stevens* reference to achieve the presently recited subject matter, wherein the presentation layer comprises a presentation module and a rendering module. Consequently, the

search revealed that the asserted substitution is not well-known, and therefore is not entitled to be relied upon in order to reject the present claimed invention. For at least the foregoing reasons, removal of the pending rejection is requested and allowance is solicited.

With respect to the “Peek” reference citation in Paragraph 25 of the instant Action, Applicants presume Claims 25-28 are being addressed. The combination of Stevens in view of Peek fails to teach the recited subject matter because Peek is not cited as correct the deficiencies in Stevens with respect to multi-layers “wherein any of the layers may be changed without impacting other layers”, as discussed with respect to the pending § 102(b) rejection of Claim 1. Moreover, Peek fails to teach “a form processor to generate a data input form for the multi-layer application by automatically adding, to a form definition that defines the data input form, validation code to validate subsequent inputs to one or more fields of the data input form.” Peek is directed to filling in a form by adding a person’s name, address, phone number, etc. *Peek*, Pages 875-876. The Peek reference fails to teach a system in which data input is generated from a multi-layer application to define the data input form, or validation code to validate subsequent inputs. Peek does not disclose these teachings because Peek is merely directed to filling in forms rather than addressing defining data input forms or validating subsequent inputs. As Peek does not correct the deficiency in Stevens at least with respect to defining data input forms and validating subsequent inputs, the asserted combination does not teach each and every limitation which is required for a

*prima facie* case of obviousness to exist. Removal of the pending rejection is requested and allowance is solicited.

With respect to Paragraph 23, Page 6, Applicants traverse the Office's statements. Applicants are unsure to which claim the Office's comments are directed as Claim 17 does not include the term "constraint" and no other claim is referenced in the selected portion. Removal of the pending rejection is requested and allowance is solicited. Applicants traverse the remainder of the rejection which is not drawn to any of the claims in particular.

#### **V. Objection to Drawings under 37 CFR 1.81(a)**

The drawings are objected to under 37 CFR 1.81(a). Applicants traverse the objection. The Office has incorrectly asserted that new drawings are "necessary" for examination. Applicants disagree for at least the following reasons,

(1) The necessity of drawings is decided by Office of Initial Patent Examination (OIPE) (M.P.E.P. 608.02 (III)). The OIPE permitted the present application to be examined, thereby indicating the "necessity" requirement under 35 U.S.C. §113 (if applicable) was met.

(2) The drawings meet the requirement of disclosing each claimed feature. 37 CFR 1.83(a).

(3) The Office's position is incorrect that,

The drawings are objected to because, though the drawings are comprehensive in nature and cover multiple aspects of the invention, the drawings still fail to convey to one of ordinary skill in the art what exactly is being accomplished by the invention. The closest drawing that the Examiner feels is to showing the actual usage of the invention, which is still

unclear, is Figure 20, which shows a login prompt on a web page and a human translator. Even with these two items present in Figure 20, and the descriptions given for this and all other submitted drawings, the Examiner is not assisted in graphing the invention at all based upon the currently submitted drawings. Current Action, Page 7, Paragraph 28.

The Office's argument fails to (A) cite any controlling legal principle (statutory or regulatory) which compels the Applicants to provide corrected drawings and (B) fails to provide any specific rationale why one of ordinary skill in the art cannot understand the drawings. “[w]here a major technical rejection is proper, it should be stated with a full development of reasons rather than by a mere conclusion coupled with some stereotyped expression.” *M.P.E.P. §707.07(g)*. Removal of the pending objection is request, for at least the above reasons, and allowance is solicited.

#### **VI. Provisional Obviousness Double Patenting Rejection**

The provisional double patenting rejection to Claims 1, 17, 23, 24, 25 and 48-50 is improper and should be withdrawn. As the rejection is provisional, Applicant requests the rejection be held in abeyance pending the patenting of the co-pending application at which time a terminal disclaimer may be filed. Applicant traverses the Office's assertion that the pending Double Patenting Rejection was not addressed (Paragraph 27, Page 6) in the preceding Reply. Applicants draw the Office's Attention to Pages 48-50 of the Reply. Applicants respectfully re-forward the argument from the preceding Reply.

The pending obviousness double patenting rejection is improper because,

1. The citation of two references, i.e., A in view of B, as the basis of an obviousness double patenting rejection is improper.
2. The recited subject matter is non-obvious over the recited subject matter in the related applications.
3. The applications upon which the rejection is based were filed on the same day as the present application and thus are not “art”, if the Office is attempting to reject the claims based on a 35 U.S.C. §§102(e) or 103(a) rationale.

The pending obviousness double patenting rejection is improper as the rejection cites multiple co-pending applications in the instant Action. Obviousness double patenting is limited to considering the claims of the instant application to claims in a co-pending application or issued patent. M.P.E.P. §804, 800-21. Emphasis added. Additionally, the present rejection fails to “(A) Determine the scope and content of a patent claim relative to a claim in the application at issue; (B) Determine the differences between the scope and content of the patent claim as determined in (A) and the claim in the application at issue; . . .” *Id.* and M.P.E.P. §804 (III). Emphasis added. In the current situation the Office is attempting to reject claims in the application over combinations of disclosures in multiple applications. This methodology is improper because (1) the co-pending claims are not considered, instead the co-pending applications are applied, and (2) the rejection is based on multiple applications. In-light of the foregoing, a *prima facie*

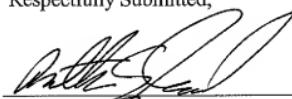
case of obviousness double patenting does not exist and the rejection should be withdrawn.

The claims are believed to be in condition for allowance. Applicant respectfully requests reconsideration and issuance of the present application. Should any issue remain that prevents immediate issuance of the application, the Examiner is encouraged to contact the undersigned to discuss the unresolved issue.

Respectfully Submitted,

Dated: Feb. 9, 2007

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